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4 JDS UNIPHASE CORPORATION,
5 Plaintiff,
6 v.
7 COADNA PHOTONICS, INC.,
8 Defendant.

9 Case No. 14-cv-01091-JST
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**ORDER DENYING MOTION TO
DISMISS**

Re: ECF No. 9

12 **I. INTRODUCTION**

13 Before the court is Defendant CoAdna Photonic, Inc.’s (“Defendant”) Motion to Dismiss.
14 ECF No. 9. The matter came for hearing on June 26, 2014.

15 **II. BACKGROUND**

16 **A. Procedural History**

17 Plaintiff JDS Uniphase Corporation (“Plaintiff”) filed this action for two counts of direct
18 patent infringement against Defendant on March 7, 2014. Complaint (“Compl.”), ECF No. 1.
19 Defendant filed the instant motion on April 3, 2014. ECF No. 9.

20 **B. Factual Allegations**

21 The court accepts the following allegations as true for the purposes of resolving this Rule
22 12(b)(6) motion. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

23 Plaintiff owns U.S. Patent No. 7,162,115¹ (“the ‘115 Patent”). Compl. ¶ 9. The ‘115

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28 ¹ The Plaintiff also owns U.S. Patent No. 6,498,872, and the complaint alleges that Defendant is
infringing it. On June 24, 2014, however, Plaintiff voluntarily dismissed its claims concerning the

1 Patent was issued January 9, 2007. Id., Ex. 2. Titled “Multiport Wavelength-Selective Optical
2 Switch,” the patent’s twelve claims relate generally to optical switches for use in optical
3 communications applications. Id.

4 Defendant CoAdna makes and sells optical communications and networking equipment.
5 Id. ¶ 10. Specifically, CoAdna makes and sells products it refers to as its Wavelength Selective
6 Switch (“WSS”) products, including at least the 50GHz and 100GHz channel spacing models. Id.
7 ¶ 11. The technology used in CoAdna’s WSS products is sometimes referred to as CoAdna’s
8 Lightflow™ technology. Id. CoAdna’s WSS products can be used in fixed and flexible grids.
9 Id.

10 Regarding the ‘115 Patent, Plaintiff alleges that: (1) Defendant’s WSS products embody
11 and are covered by at least one claim of the patent; (2) Defendant has directly infringed and is
12 directly infringing at least one claim of the patent under 35 U.S.C. § 271(a) by making, using,
13 offering to sell, and/or selling within the United States and/or importing into the United States its
14 WSS products; (3) Defendant will continue to directly infringe the patent unless enjoined by the
15 court; (4) Plaintiff has sustained damages as a direct and proximate result of Defendant’s
16 infringing activities; (5) Plaintiff will suffer and is suffering irreparable harm from Defendant’s
17 infringing activities and deserves an injunction; and (6) Defendant’s infringement of the patent.
18 Id. ¶¶ 20-25; see also ECF No. 28.

19 Plaintiff seeks a judgment that Defendant has infringed the ‘115 Patent, damages, and
20 declaratory and injunctive relief. Id. at pp. 4-5.

21 **C. Legal Standard**

22 On a motion to dismiss, courts accept the material facts alleged in the complaint as true, as
23 well as all reasonable inferences that may be drawn from those facts. Navarro v. Block, 250 F.3d
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25 ‘872 patent without prejudice. ECF No. 28.

1 729, 732 (9th Cir. 2001). Rule 8(a)(2) of the Federal Rules of Civil Procedure “generally requires
2 only a short and plain statement of the plaintiff’s claim.” Bell Atlantic Corp. v. Twombly, 550
3 U.S. 544, 555 (2007) (internal quotation marks and citation omitted). However, “the tenet that a
4 court must accept a complaint’s allegations as true is inapplicable to threadbare recitals of a cause
5 of action’s elements, supported by mere conclusory statements.” Ashcroft v. Iqbal, 556 U.S. 662,
6 678 (2009). To survive a motion to dismiss, a plaintiff must plead “enough facts to state a claim
7 for relief that is plausible on its face.” Twombly, 550 U.S. 544, 570 (2007). Plausibility does not
8 mean probability, but it requires “more than a sheer possibility that a defendant has acted
9 unlawfully.” Iqbal, 556 U.S. at 687. “A claim has facial plausibility when the plaintiff pleads
10 factual content that allows the court to draw the reasonable inference that the defendant is liable
11 for the misconduct alleged.” Id.

12 **D. Jurisdiction**

13 The court has subject-matter jurisdiction over this “civil action arising under” an “Act of
14 Congress relating to patents.” 28 U.S.C. § 1338(a).

15 **III. ANALYSIS**

16 Form 18 of the Federal Rules of Civil Procedure sets forth a sample complaint for direct
17 patent infringement and requires: “(1) an allegation of jurisdiction; (2) a statement that the plaintiff
18 owns the patent; (3) a statement that defendant has been infringing the patent ‘by making, selling,
19 and using [the device] embodying the patent’; (4) a statement that the plaintiff has given the
20 defendant notice of its infringement; and (5) a demand for an injunction and damages.” K-Tech
21 Telecomms., Inc. v. Time Warner Cable, Inc., 714 F.3d 1277, 1283 (9th Cir. 2013), cert. denied,
22 134 S. Ct. 1026 (U.S. 2014).

23 The Forms in the Federal Rules Appendix, such as Form 18, satisfy the federal pleading
24 rules “and illustrate the simplicity and brevity that these rules contemplate.”” Id. (quoting Fed. R.
25 Civ. P. 84); see also In Re Bill of Lading Transmission & Processing Sys. Pat. Litig., 681 F.3d

1323, 1334 (Fed. Cir. 2012)). Rule 84 and the Advisory Committee notes to the 1946 amendment
1 of Rule 84 make clear that “the proper use of a form contained in the Appendix of Forms
2 effectively immunizes a claimant from attack regarding the sufficiency of the pleading.” K-Tech,
3 714 F.3d at 1283. That immunizing effect is not altered by variations in regional circuit law,
4 because the Federal Rules cannot be amended by judicial interpretation. See id. n.1 (“Form 18 is a
5 national form, and any argument that we should interpret it differently” based on circuit law “is
6 without merit”); see also Twombly, 550 U.S. at 569 n.14 (noting no change in pleading standard
7 because amendment to Federal Rules may not be accomplished by judicial interpretation).
8 Accordingly, “to the extent any conflict exists between Twombly (and its progeny) and the Forms
9 regarding pleading requirements, the Forms control.” K-Tech, 714 F.3d at 1283. Nevertheless,
10 “an implausible claim for patent infringement rightly should be dismissed.” Id. at 1284.
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12 Defendant first argues that Form 18 itself is insufficient under Twombly and Iqbal.
13 Defendant relies primarily on three unpublished opinions from this district, and a very recent case
14 from the Eastern District of Virginia. Defendant CoAdna Photonics, Inc.’s Motion to Dismiss
15 (“Mot.”) at 2-3, 5, ECF No. 9. The three Northern District opinions were all decided before Bill
16 of Lading and K-Tech, and are no longer good authority to the extent that they contradict those
17 controlling precedents. Avocet Sports Tech., Inc. v. Garmin Int’l Inc., No. 11-cv-04049 JW, 2012
18 WL 1030031, at *3 (N.D. Cal. Mar. 22, 2012); PageMelding, Inc. v. ESPN, Inc., No. 11-cv-06263
19 WHA, 2012 WL 851574, at *1-2 (N.D. Cal. Mar 13, 2012); Cal. Inst. of Computer Assisted
20 Surgery, Inc. v. Med-Surgical Servs., Inc. (“CICAS”), No. 10-cv-02042 CW, 2010 WL 3063132,
21 at *2 (N.D. Cal. Aug. 3, 2010).

22 As for Macronix Int’l Co., Ltd. v. Spansion, Inc., __ F. Supp.2d __, No. 3:13-cv-679-REP,
23 2014 WL 93450, at *8-9 (E.D. Va. Mar. 10, 2014), that opinion forcefully disagrees that Bill of
24 Lading and McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1357-60 (Fed.Cir. 2007), correctly
25 applied the Supreme Court’s decisions in Twombly and Iqbal. This court is unpersuaded by the
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1 opinion in Macronix, since it provides no argument for how K-Tech, which again reinforced the
2 Federal Circuit's understanding of Form 18, can be distinguished. To the extent K-Tech's
3 analysis rested on "the applicable law of the regional circuit," 714 F.3d at 1282, it was also
4 applying the controlling law of the Ninth Circuit that this court is also bound to apply.

5 Defendant next argues that, even if a Form 18-compliant complaint does satisfy Rule 8, the
6 Complaint does not satisfy Form 18. Defendant notes that the K-Tech plaintiffs provided a more
7 factually detailed complaint than the one at issue here. Defendant CoAdna Photonics, Inc.'s Reply
8 in Support of Motion to Dismiss ("Reply"), 5-6, ECF No. 22. This argument is unavailing. In K-
9 Tech, the Federal Circuit did not hold that the complaint before it represented the minimum
10 amount of factual material that Form 18 requires. Indeed, the court stated that "a complaint
11 containing just enough information to satisfy a governing form may well be sufficient under
12 Twombly and Iqbal." 714 F.3d at 1284.

13 Here, Defendant does not dispute the fact that the Complaint literally satisfies the
14 requirements of Form 18. The Complaint (1) alleges jurisdiction, Compl. ¶¶ 3-5; (2) states that
15 Plaintiff owns the '115 patent, id. at ¶¶ 8-9; (3) states that CoAdna has been infringing the patent
16 "by making, using, offering to sell and/or selling" its WSS products, id. at ¶¶ 11, 14-15, 21-22; (4)
17 serves as notice to CoAdna of its infringement;² and (5) includes a prayer for relief in the form of
18 injunction and damages, id. at ¶¶ 4-5.

19 K-Tech acknowledged that "an implausible claim for patent infringement rightly should be
20 dismissed." Id. at 1284. Perhaps the Federal Circuit would regard a complaint bringing such an
21 "implausible claim" to be non-compliant with Form 18. Perhaps it would consider such a
22 complaint to present an exception to the rule that Form 18-compliant complaints satisfy Rule 8.
23 This court need not resolve these questions, however, because Defendant provides no persuasive
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28 ² See Superior Indus., LLC v. Thor Global Enters. Ltd., 700 F.3d 1287, 1295 (Fed. Cir. 2012)
(under 35 U.S.C. § 287(a), filing a complaint serves as notice for the purposes of Form 18).

1 argument that Plaintiff's patent infringement claims are "implausible." What Defendant argues is
2 that Plaintiff's are not sufficiently specific; he does not explain why it is implausible that
3 Defendant's products infringe on the Patent-in-Suit.

4 Plaintiff has stated a claim for direct infringement of the '115 Patent. The Complaint
5 complies with Form 18, and there is no reason to conclude that its claims are implausible. In
6 addition, it includes copies of Plaintiff's patents and provides information about the specific
7 products that Plaintiff believes are infringing those patents. At least in an action for direct
8 infringement, nothing more is required to provide CoAdna notice of the claims asserted against it.
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10 As an aside – but perhaps a relevant one – it is worth noting that, under this district's
11 Patent Local Rules, plaintiff will be soon be required to disclose detailed and specific information
12 regarding exactly what claims of the patent it contends are infringed and by which specific
13 instrumentalities. See Patent L.R. 3-1. Therefore, at least in this district, Defendant will not labor
14 long under any difficulty understanding the nature of the claims against it and beginning to
15 prepare its defense.
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IV. CONCLUSION

17 For the foregoing reasons, the motion to dismiss is DENIED.
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19 **IT IS SO ORDERED.**

20 Dated: June 26, 2014
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22 JON S. TIGAR
23 United States District Judge
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